



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF N-USA, INC.

DATE: APR. 3, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a solar window film business, sought to employ the Beneficiary as an operations research analyst. It requested classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director of the Nebraska Service Center initially approved the petition, but subsequently revoked the approval on the ground that the record did not establish that the Beneficiary had five years of qualifying experience as an operations research analyst, as required by the labor certification. The Director also invalidated the labor certification based on a finding that the Petitioner and the Beneficiary had misrepresented the Beneficiary's employment experience. The Petitioner filed an appeal, which we dismissed. We concurred with the Director's decision to revoke the approval of the petition and invalidate the labor certification on the grounds stated in his decision.

The case is now before us on motion to reopen and reconsider filed by the Beneficiary. A motion may only be filed by an affected party. *See* 8 C.F.R. § 103.5(a)(1)(i) (when a motion is filed by an affected party, the official having jurisdiction may reopen the proceeding or reconsider the prior decision, if proper cause is shown). An affected party means "the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition." 8 C.F.R. § 103.3(a)(1)(iii)(B). In a revocation of an employment-based immigrant visa petition, the affected party is generally the petitioner, the prospective employer that filed the petition.

As the Beneficiary is not an affected party, the Beneficiary is not entitled to file a motion.<sup>1</sup> Therefore, the motion to reopen and reconsider must be denied.

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<sup>1</sup> We note that USCIS recently decided to treat certain "portability-eligible" beneficiaries as affected parties in revocation proceedings. *See Matter of V-S-G-, Inc.*, Adopted Decision 2017-06 (AAO Nov. 11, 2017). However, the Beneficiary has neither asserted nor established that he is portability-eligible such that he could be considered an affected party in these proceedings. Thus, the Beneficiary lacks standing in this matter.

*Matter of N-USA, Inc.*

**ORDER:** The motion to reopen is denied.

**FURTHER ORDER:** The motion to reconsider is denied.

Cite as *Matter of N-USA, Inc.*, ID# 1147657 (AAO Apr. 3, 2018)